

(d) The FHWA's authorization and obligation of preliminary engineering and other preconstruction funds prior to the completion of the NEPA process is limited to preliminary design and such additional activities as may be necessary to complete the NEPA process. After the completion of the NEPA process, the FHWA may issue an authorization to proceed with final design and construction and obligate Federal funds for such purposes.

[72 FR 45337, Aug. 14, 2007]

**§ 636.110 What procedures may be used for solicitations and receipt of proposals?**

You may use your own procedures for the solicitation and receipt of proposals and information including the following:

- (a) Exchanges with industry before receipt of proposals;
- (b) RFQ, RFP and contract format;
- (c) Solicitation schedules;
- (d) Lists of forms, documents, exhibits, and other attachments;
- (e) Representations and instructions;
- (f) Advertisement and amendments;
- (g) Handling proposals and information; and
- (h) Submission, modification, revisions and withdrawal of proposals.

**§ 636.111 Can oral presentations be used during the procurement process?**

(a) Yes, the use of oral presentations as a substitute for portions of a written proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, you must comply with the appropriate State procurement integrity standards.

(b) Oral presentations may substitute for, or augment, written information. You must maintain a record of oral presentations to document what information you relied upon in making the source selection decision. You may decide the appropriate method and level of detail for the record (e.g., videotaping, audio tape recording, written record, contracting agency notes, copies of offeror briefing slides or presentation notes). A copy of the record should be placed in the contract

file and may be provided to offerors upon request.

**§ 636.112 May stipends be used?**

At your discretion, you may elect to pay a stipend to unsuccessful offerors who have submitted responsive proposals. The decision to do so should be based on your analysis of the estimated proposal development costs and the anticipated degree of competition during the procurement process.

**§ 636.113 Is the stipend amount eligible for Federal participation?**

(a) Yes, stipends are eligible for Federal-aid participation. Stipends are recommended on large projects where there is substantial opportunity for innovation and the cost of submitting a proposal is significant. On such projects, stipends are used to:

- (1) Encourage competition;
- (2) Compensate unsuccessful offerors for a portion of their costs (usually one-third to one-half of the estimated proposal development cost); and
- (3) Ensure that smaller companies are not put at a competitive disadvantage.

(b) Unless prohibited by State law, you may retain the right to use ideas from unsuccessful offerors if they accept stipends. If stipends are used, the RFP should describe the process for distributing the stipend to qualifying offerors. The acceptance of any stipend must be optional on the part of the unsuccessful offeror to the design-build proposal.

(c) If you intend to incorporate the ideas from unsuccessful offerors into the same contract on which they unsuccessfully submitted a proposal, you must clearly provide notice of your intent to do so in the RFP.

[67 FR 75926, Dec. 10, 2002, as amended at 73 FR 77502, Dec. 19, 2008]

**§ 636.114 What factors should be considered in risk allocation?**

(a) You may consider, identify, and allocate the risks in the RFP document and define these risks in the contract. Risk should be allocated with consideration given to the party who is in the best position to manage and control a given risk or the impact of a given risk.